

**FINDING OF EMERGENCY
OF THE
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (HCD)**

**REGARDING THE 2001 CALIFORNIA BUILDING CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2**

The adoption of these regulations or order of repeal is necessary for the immediate preservation of the public peace, health and safety, or general welfare, as follows:

State law prior to January 1, 2004, adopted the minimum requirements of the Federal Fair Housing Act with regard to minimum building standards for disabled access in condominiums and rental units, with some additional state requirements. Both the federal and state laws permitted the exemption of townhouse-type construction in covered multifamily buildings from the building standard design requirements for access for persons with disabilities.

However, SB 1025 (Ch. 642, Stats. of 2003) revised Government Code Section 12955.1, and added Government Code Section 12955.1.1, regarding the definition of discrimination to include prescribed requirements relating to multistory dwelling units (townhouse-type) in buildings without an elevator that consist of at least four condominium dwelling units or at least three rental apartment dwelling units. While local building officials have the duty to enforce other provisions of the federal and state laws governing disabled access building standards, the bill did not expressly establish enforcement authority for local building officials with respect to the townhouse-type construction now subject to the same requirements.

The amendments to Government Code Section 12955.1 and the addition of Government Code Section 12955.1.1 had a deferred operative date of July 1, 2005, and gave the authority to the Department of Housing and Community Development (HCD) and Division of the State Architect (DSA) to propose regulations as deemed necessary for the implementation of the new requirements. HCD proposed regulations to the California Building Standards Commission (CBSC) on August 2, 2004, the first code adoption cycle following the bill's enactment. These regulations would have clarified the enforcement obligation of local building officials, as well as provided clarity to builders, architects and engineers, plan review agencies, and consumers as to the requirements of the new law.

Given the extensive code adoption process, it is anticipated that the effective date of these regulations will not be enforceable at the local level until the end of 2006 leaving a gap of enforcement and clarity of approximately 18 months. Both the design and enforcement communities are presently confused as to the application and specifications mandated by the revisions.

The Department of Housing and Community Development is proposing to adopt those building standards through the emergency process that are the most critically needed updates to ensure the health, safety, and general welfare of the public relative to the buildings HCD has the authority to regulate. The Department of Housing and Community Development finds that:

1. *The revised law does not provide clarity to the affected parties as to either the buildings subject to the new requirements or the standards themselves. Thousands of multistory dwelling units are in various phases of predevelopment and the builders and developers are subject to significant penalties under the federal and state fair housing laws if they do not comply with the statute and incorporate the disabled access standards into their designs. On the other hand, incorporation of the disabled access standards will be extremely expensive if incorporated where not necessary, threatening both the financial viability of the developers and their developments, and/or the affordability of the new homes at a time when there is a crisis in affordable housing opportunities in California.*
2. *The revised law does not provide clarity to permit persons with disabilities to ensure that new covered multistory dwelling units being constructed in their locale will have disabled access opportunities required by law. There is a critical shortage of housing available for persons with disabilities.*
3. *Neither developers nor consumers can be assured that attempted compliance with the new standards for covered multistory dwelling units are being properly interpreted because there is a question as to whether local building officials must enforce these amendments, along with their existing obligation to enforce all other parts of the disabled access building standards under California law. Without uniform building official enforcement, different standards may be imposed in different jurisdictions, and different courts may provide conflicting rulings resulting in high costs for consumers or builders. The short-term result may be that builders cease any construction of multistory dwelling units, thus depriving Californians of affordable housing options in areas where multistory dwelling units were the only opportunity for affordable multi-family housing. In addition, developers will be at risk of losing significant investments in land purchase and planning costs, design costs, and other predevelopment costs, which can be prevented by the availability of public agency review and approval of proposed plans.*
4. *In addition, cities and counties may be subject to significant financial and other penalties for under-enforcement or over-enforcement of the laws governing disabled access in covered multistory dwelling units. The proposed regulations clarify that local government building departments can and should provide plan review and approval or rejection based on objective standards imposed by the new law.*
5. *One purpose of the state and federal disabled access requirements is to provide uniformity for persons with disabilities who visit a unit which is, or should be, equipped with the standards necessary for them. If there is a question as to what standards are required for what units, and this is resolved on a jurisdiction-by-jurisdiction basis, persons with mobility, sight, hearing, and other impairments will not be safe when visiting multistory dwelling units which have not been subjected to uniform plan review and approval, creating great potential in health and safety threats or denying them access to those units.*

AUTHORITY AND REFERENCE

The Department of Housing and Community Development proposes to adopt these building standards under the authority granted by Health and Safety Code

Section 17921 and Government Code Section 12955.1. The purpose of these building standards is to implement, interpret, and make specific the provisions of Government Code Sections 12955.1 and 12955.1.1.

INFORMATIVE DIGEST

Summary of Existing Laws

Existing laws govern accessibility requirements for persons with disabilities in specified dwelling units within covered multifamily buildings. However, existing state law exempts accessibility standards for multistory dwelling units (townhouse-type) in covered multifamily buildings without an elevator. Current federal law permits the exemption of accessibility requirements in townhouse-type dwellings constructed in covered multifamily buildings without an elevator.

Additionally, current state law requires the building department of every city and county to enforce regulations published in the California Building Standards Code, as well as other rules and regulations promulgated by HCD.

Summary of Existing Regulations

Existing regulations pertaining to this regulatory action are contained in the 2001 California Building Code (California Code of Regulations, Title 24, Part 2). The regulations being modified by this action are contained in Chapter 11A which governs "Housing Accessibility". Current regulations specifically exempt townhouse-type construction in covered multifamily buildings (those without elevators) from building standards for persons with disabilities. This is consistent with state and federal laws.

Summary of Effect

This regulatory action makes some of the more critically needed updates to California standards pertaining to disabled access in specified residential dwellings. Specifically, this action will clarify the provisions of SB 1025 to require that 10% of townhouse-type construction in covered multifamily buildings (those without elevators) is subject to building standards for persons with disabilities. These provisions apply only to the primary entry level of the unit. Because the provisions of SB 1025 become effective on July 1, 2005, these regulations will clarify the requirements of the new law for the affected public as of that date.

NOTE: Because "Carriage units" are not defined in current building standards, but are exempted in both federal law and regulations (see Attachment A - Letter from U.S. Department of Housing and Urban Development), as well as state law by its cross-reference to these federal provisions. Therefore, a definition is proposed for inclusion within these amendments. This definition is necessary to clarify the scope of the proposed building standards and address inherent confusion between the terms "carriage unit" and "townhouse-type construction".

Comparable Federal Statutes or Regulations

The Fair Housing Amendments Act of 1988 (42 USC 3601, *et seq.*) contains comparable accessibility standards. Federal statutes and regulations (24 CFR Ch 1, Subch. A, Appendix II) specifically exempt townhouse-type construction in covered

multifamily buildings (those without elevators) from building standards for persons with disabilities.

These proposed state building standards, as intended by SB 1025, will exceed federal statutes and regulations by requiring that 10% of townhouse-type construction in covered multifamily buildings (those without elevators) in California is subject to building standards for persons with disabilities.

NOTE: "Carriage units" are exempted by both federal law and regulations (see Attachment A - Letter from U.S. Department of Housing and Urban Development).

Small Business Effect

This regulatory action may have an effect on small businesses as the standards contained in this proposal will require designers and builders to include design specifications and materials in buildings that are currently exempt.

POLICY STATEMENT OVERVIEW

The broad objective of these proposed regulations is to comply with the intent of SB 1025 (Ch. 642, Stats. of 2003) which revised Government Code Section 12955.1, and added Government Code Section 12955.1.1, as follows:

- This bill redefined "discrimination" to include accessibility requirements for certain types of townhouse-type construction in covered multifamily buildings—those without elevators. These types of buildings had previously been exempted from both state and federal laws from building standard design requirements for access for persons with disabilities. However, the bill did not provide clarity as to which buildings are subject to the new requirements nor the standards themselves.
- This bill did not include clear enforcement authority for these new provisions for local building officials, although these officials have the duty to enforce other provisions of federal and state laws governing disabled access provisions in building standards.
- The provisions of this bill are to become operative on July 1, 2005.

Therefore, the specific objectives of these proposed regulations are to:

- Specify exactly which buildings and dwelling units are affected by this new law;
- Clarify enforcement for local building officials;
- Ensure that the affected public is provided with adequate information needed to comply with the requirements of SB 1025.

Therefore, regulations must be adopted and effective no later than July 1, 2005 within the 2001 California Building Code to ensure that those affected by the provisions of SB 1025 have clear guidelines to meet its requirements.

MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

There are no other matters prescribed by statute applicable to this proposed action.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

HCD has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

FISCAL IMPACT STATEMENT (attached Form 399)

- A. Cost or Savings to any state agency: **YES**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **NO**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**
- E. Cost or savings in federal funding to the state: **NO**

Estimate: The proposed regulatory changes may impose costs on builders and developers involved with the construction of townhomes. The extent of these costs is dependent on the use and type of rooms or features which have been designed on the primary entry level of a townhouse. The cost or savings of this regulatory action is unknown because the application of the building code standards provides designers and builders specific requirements when designing and constructing townhouse type dwellings in covered multifamily buildings without specifying particular methods of construction or materials.